



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Writ Petition No. 4348 of 2021

[Umesh S/o Ajabrao Waghdhare ..vs.. Divisional Manager, The
Maharashtra Fisheries Development Corporation Ltd., Nagpur and anr.]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. D. S. Lambat, Advocate for the petitioner
Mr. D. M. Ailani, Advocate for respondent nos. 1 and 2

CORAM : ANIL L. PANSARE J.

DATED : 10-02-2025

Heard for some time.

2. The petitioner is before the Court against the concurrent findings rendered by the Labour Court as also the Industrial Court.
3. The petitioner filed complaint under Section 28 of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (for short 'MRTU & PULP Act') alleging unfair labour practice.
4. According to the petitioner, he was appointed by respondents as Weight Measurer with effect from 15-1-2009 and continued in service till 31-5-2011. Neither appointment order nor termination order was issued. The evidence led by the petitioner remain unchallenged. Despite such status, the Courts below were of the view that the petitioner failed to make out a case that he was in continuous service for 240 days. Since the appointment order and termination order was not on record, the Labour Court expected the petitioner to prove his claim by producing relevant documents.
5. The petitioner appears to have placed on record certain documents which were not addressed to petitioner. The

documents were authored by respondent no. 1. The documents indicate, under the head of management expenses, the name of petitioner for the month from January, 2009 to November, 2009. Certain payments viz. Rs. 1250, 1500, 2000 etc. were shown to have been paid to the petitioner. Both the Courts below were of the view that these documents ought to have been proved through its author and having not done so, the petitioner failed to prove the claim.

6. Learned counsel for the petitioner has relied upon Exhibit 39 – reply submitted by respondent no. 2 to the notice issued by the petitioner. In reply, which was given without prejudice, respondent no. 2 has stated that work was given to petitioner on purely temporary basis, as and when available. Accordingly, respondent no. 2 has stated that since the work was on the basis of availability, the order of appointment was not given and, therefore, there arises no question of order of termination.

7. This plea appears to be in tune with the documents that were placed on record by the petitioner in the sense, the documents indicates that he was paid amount that was varying viz. from Rs. 1250/- to Rs. 2000/-. If the petitioner was appointed on a post on a monthly salary of Rs. 1500/- as claimed, the payment vouchers would have shown uniform payment to the petitioner. Thus the document, which he has relied upon, goes against his plea. The document, Exhibit 39 speaks of work given to the petitioner as and when available.

8. Learned counsel for the petitioner submits that he had filed application/notice to admit these documents. However, the respondents did not file say and, therefore, would amount to admission of documents. I do not find substance in the argument. Even if the provisions of Civil Procedure Code,

1908 (for short 'the Code') are applicable to the proceedings in a complaint filed under Section 28 of the MRTU & PULP Act, what is provided in Rule 2 of Order 12 of the Code is that, if notice to admit document is given and the other side has refused or neglected to admit the same, the costs of proving the document shall be paid by the party who had so neglected or refused to admit the documents. Thus, the only benefit that was available to the petitioner was to prove these documents at the costs of respondents which he failed to do as he has not examined the author of the documents. That being so, both the Courts below were correct in arriving at a conclusion that the petitioner failed to prove his case of continuous service of 240 days or that he was appointed on monthly salary of Rs. 1500/- as claimed by him.

9. Learned counsel for the petitioner submits that the petitioner entered witness box and led evidence in support. He was not cross-examined and, therefore, the burden of proof will shift upon the respondents to prove that he did not complete 240 days of service in a requisite period. In support, he has relied upon the judgment of Hon'ble Supreme Court in the case of ***Director, Fisheries Terminal Department Vs. Bhikubhai Meghajibhai Chavda [(2010) 1 SCC 47]***. He has invited my attention to paragraph no. 16 and 17 which read thus :

"16. This court in R. M. Yellatti v. Asstt. Executive Engineer has observed : (SCC p. 116, para 17)

"17. However, applying general principles and on reading the [aforesaid] judgments, we find that this Court, has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily-waged

earners, there will be no letter of appointment or termination. There will also be no receipt of proof of payment. Thus in most cases, the workman (the claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register, etc. Drawing of adverse inference ultimately would depend thereafter on the facts of each case."

17. Applying the principles laid down in the above case by this court, the evidence produced by the appellants has not been consistent. The appellants claim that the respondent did not work for 240 days. The respondent was a workman hired on a daily wage basis. So it is obvious, as this court pointed out in the above case that he would have difficulty in having access to all the official documents, muster rolls etc. in connection with his service. He has come forward and deposed, so in our opinion the burden of proof shifts to the appellant employer to prove that he did not complete 240 days of service in the requisite period to constitute continuous service."

As could be seen in the case of R. M. Yellatti Vs. Assistant Executive Engineer [(2006) 1 SCC 106], the Supreme Court held that the workman has to discharge burden by adducing evidence, both oral and documentary and in the case where the service is on daily-wages, the workman may not possess the documentary evidence and can only call the employer to produce the same. The Supreme Court then held that in the said case, the respondent – workman was hired on daily wage basis and, therefore, he will have difficulty in accessing the official documents, muster roll etc. in connection with his services. He entered witness box and, therefore, burden was said to be shifted on the employer to prove that he did not complete 240 days of service. The fact the petitioner therein was hired on daily wages was established.

10. In the present case, the petitioner has come up with a categorical case that he was appointed as Weight Measurer on a monthly salary of Rs. 1500/-. If such was the case, firstly, his appointment ought to be by written order which is not the case here. The petitioner has not come up with a case of working as a daily wager but comes with a case as salaried employee. In the circumstances, he could have placed before the Court a monthly payment received by him. He has instead relied upon certain documents which were authored by respondent no. 1. The documents were not even issued in favour of the petitioner to say that he could prove the contents of the same. That apart, even if the documents are considered, that would only falsify the case the petitioner that he was appointed on monthly salary of Rs. 1500/- because the documents speak that he was paid different payment ranging from Rs. 1250/- to 2000/- for the months from January, 2019 to November, 2019. Further document, Exhibit 39, which is relied upon by the petitioner, goes against his case. The document speaks of hiring petitioner as and when the work was available. In the circumstances, the aforesaid judgment will be of no help to the petitioner nor will the failure of respondents to admit document be of any help.

11. At this stage, learned counsel for the petitioner submits that the petitioner was not a salaried employee but was a casual labour.

12. Thus, it appears that the petitioner is not even aware as to whether he was appointed on a monthly salary or was a daily wager. If this is how the case is to be pleaded and argued before the Court, it will be difficult to take a different view, particularly where the challenge is to the concurrent findings.

13. Put altogether, the petitioner failed to make out a case. No interference is called for in the supervisory jurisdiction under Article 227 of the Constitution. The petition is accordingly dismissed with no order as to costs.

(Anil L. Pansare, J.)

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